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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARIBEL VASQUEZ and JOSEPH RIOS,)	Case No. 1:23-cv-01652-SKO
)	
Plaintiffs,)	NOTICE OF MOTION AND
)	MOTION TO SUBSTITUTE,
v.)	DISMISS UNDER FEDERAL RULES
)	OF CIVIL PROCEDURE 12(b)(6),
KAWEAH HEALTH MEDICAL CENTER;)	AND REMAND
EVA HIRWE, M.D.; SHAMIKA BANKS,)	
M.D.; and DOES 1 to 250, inclusive,)	DATE: January 3, 2024
)	TIME: 9:30 A.M.
Defendants.)	COURT: Ctr 7, 6th Floor
)	Hon. Sheila K. Oberto

PLEASE TAKE NOTICE, that on January 3, 2024, at 9:30 a.m., or at any other time as prescribed by the Court, Defendant United States of America will and hereby does move to substitute the United States for Defendant Eva Hirwe, M.D.; to dismiss plaintiffs' claims against the United States pursuant to Federal Rule of Civil Procedure 12(b)(6); and to remand claims against remaining defendants to state court. This motion will be made in Courtroom 7, 6th Floor, of the United States Courthouse located at 2500 Tulare Street, Fresno, California 93721, the Honorable Sheila K. Oberto, United States Magistrate Judge, presiding.

Dr. Hirwe is a "deemed" employee of the Public Health Service under the Federally Supported Health Centers Assistance Act (FSHCAA), 42 U.S.C. § 233, and was acting within the scope of her employment at the time of the events described in plaintiffs' claims. Therefore, plaintiffs' exclusive remedy is against the United States under the Federal Tort Claims Act (FTCA), and the United States therefore should be substituted for Dr. Hirwe.

1 Further, plaintiffs' claims against the United States should be dismissed because they filed
2 their complaint without allowing sufficient time for review by the appropriate agency as required by
3 28 U.S.C. § 2675(a). The Court therefore should dismiss all claims against the United States and
4 remand all remaining claims against other defendants to state court.

5 Respectfully submitted,

6 Dated: November 29, 2023

PHILLIP A. TALBERT
UNITED STATES ATTORNEY

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8 /s/Jeffrey J. Lodge
JEFFREY J. LODGE
9 Assistant United States Attorney
10 Attorney for the United States
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